

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

| | | |
|-------------------------------------|---|---------------------|
| Provision of Improved |) | |
| Telecommunications Services and |) | |
| Speech-to-Speech Services for |) | |
| Individuals with Hearing and Speech |) | CC Docket No. 98-67 |
| Disabilities |) | |

Petition for Interim Waiver and Rulemaking

The National Exchange Carrier Association, Inc., (NECA) on behalf of the Interstate Telecommunications Relay Service Fund Advisory Council (the Council) respectfully submits this Petition for Interim Waiver regarding the compensation of telecommunications relay service (TRS) providers for calls placed from wireless telecommunications devices. Specifically, because the jurisdiction of calls placed to or from wireless phones cannot be determined from the automatic number identification (ANI) associated with wireless calls, NECA and the Council request that the Commission waive section 64.604 of its rules to the extent necessary to permit compensation from the interstate fund to relay service providers for all calls placed from wireless telephones. Waiver of this rule is requested for a two-year period in order to assure availability of relay services for mobile customers pending further study of compensation methods for mobile TRS calls.

As discussed below, problems determining the jurisdiction of relay calls may also occur in other circumstances as a result of changes, for example, in numbering technology. For this reason, NECA and the Council request that the Commission either initiate a separate rulemaking proceeding, or consider in the context of existing proceedings, the question of how relay calls should be compensated where the jurisdiction of the call cannot be determined from the ANI.

Background

The FCC established the Interstate Telecommunications Relay Service Fund (TRS Fund) in 1993 to ensure that individuals with hearing disabilities would be able to utilize the public switched telephone network (PSTN), with the assistance of a relay operator, at rates no greater than those paid by individuals without hearing disabilities.¹ Under the Commission's rules, the cost of the relay services used for interstate calls are funded by an interstate shared fund, to which all telecommunications providers contribute a *pro rata* share. In this manner, all carriers are able to fulfill their obligation to provide relay services in the most cost-efficient and economical manner possible. NECA, a not-for-profit corporation established pursuant to Subpart G of the Commission's Part 69 access rules, has administered the interstate TRS Fund since its inception.²

As required under section 64.604 of the Commission's rules, NECA formed the Interstate TRS Fund Advisory Council in 1994 to advise it on interstate TRS cost recovery

¹ See Telecommunications Relay Services, and the Americans with Disabilities Act of 1990, CC Docket No. 90-571, Third Report and Order, 8 FCC Rcd 5300 (1993) (TRS III). TRS III modified and adopted certain rules regarding TRS interstate shared funding that were proposed in an earlier Commission Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking, 8 FCC Rcd 1802 (TRS II). See Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, CC Docket No. 90-571, Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking, 8 FCC Rcd 1802 (1993) (TRS II).

² The Commission adopted shared funding as the method for interstate cost recovery in TRS II, proposing at that time that NECA be named administrator of the interstate TRS Fund. See TRS II at ¶¶ 2 and 27. TRS III designated NECA as administrator for a two-year period. See TRS III at ¶ 7. In its 1995 Fund Administrator Order, the Commission extended NECA's term as administrator for four additional years until July 23, 1999. See Appointment of the Telecommunications Relay Services (TRS) Fund Administrator and Composition of the TRS Advisory Committee, CC Docket No. 90-571, Memorandum Opinion and Order, 10 FCC Rcd 7223 (1995). In 1999, the Commission again extended NECA's term as administrator until July 25, 2003. See Appointment of the Telecommunications Relay Services (TRS) Fund Administrator and Composition of the TRS Advisory Committee, CC Docket No. 90-571, Memorandum Opinion and Order, 14 FCC Rcd 10553 (1999).

matters.³ The Council includes non-paid volunteers from the hearing and speech disability community, TRS users (voice and text telephone), state regulators and relay administrators, interstate service providers, and TRS providers.

Since the interstate TRS Fund became operational, the Commission has, from time-to-time, found it necessary to amend, waive or clarify the rules governing TRS funding to keep pace with changes in technology and service offerings. In March 2000, for example, the FCC authorized payment for interstate Speech-to-Speech (STS) minutes, interstate Spanish to Spanish minutes and all Video Relay Service (VRS) minutes from the Interstate TRS Fund.⁴ More recently, the FCC addressed reimbursement of the cost of providing Internet Protocol (IP) Relay.⁵ In the latter case, the Commission clarified that the statutory definition of TRS encompassed IP Relay service, and that providers of such services are eligible to recover their costs in accordance with section 225 of the Act. Moreover, because there is currently no automatic means to determine whether a call made via IP Relay is intrastate or interstate, the FCC authorized, on an interim basis, recovery of all costs of providing the service (i.e.,

³ 47 C.F.R. § 64.604(c)(5)(iii)(H).

⁴ Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140 (2000) (March 6th Order), and Order on Reconsideration, 16 FCC Rcd 4054 at ¶ 2 (2001).

⁵ In April 2002, the Commission clarified that IP Relay falls within the statutory definition of TRS, and therefore, such services are eligible to recover their costs from the interstate TRS fund. On an interim basis, the Commission allowed recovery of all costs of provided IP Relay from the interstate fund because, at this time, there is no automatic means to determine whether an IP Relay minute is intrastate or interstate. *See* Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Petition for Clarification of WorldCom, Inc., CC Docket No. 98-67, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, 67 Fed. Reg. 39863 (2002) (Declaratory Ruling).

without regard to whether the calls were interstate or intrastate in nature) from the interstate TRS Fund.⁶

In this regard, the Commission recognized the benefits of IP Relay in quality and flexibility of service, ease of use and convenience, and the potential for additional service features in the future. The Commission found that authorizing such payment, at least on an interim basis, was an appropriate use of the discretion granted the Commission under section 225 of the Communications Act.⁷

As the Commission is well aware, usage of wireless telecommunications services by the general public has increased dramatically in the past few years as availability of services and competition among service providers increase and prices for service plans drop. It should come as no surprise, therefore, that relay centers are seeing a corresponding increase in traffic originating from wireless telephones.⁸

Calls from wireless phones present a somewhat analogous situation to IP Relay calls, however. The ANI that is received by the relay center from a wireless call is usually that of the phone itself, based on the state or region where the phone was procured. However, the actual location of the phone, just as with the computer terminal using IP Relay, cannot currently be determined by the relay service at the time of the call. Since the majority of wireless phone usage is still in addition to residence or business wireline telephone usage, it is safe to say that most wireless calls originate from somewhere other than the physical address of the caller.

TRS calls may also be placed to wireless phones. Here again, it is not possible to know where the phone is located when it receives a call. In either case, it is therefore

⁶ *Id.* at ¶ 1.

⁷ *Id.* at ¶ 21.

difficult to determine whether the wireless TRS call is intrastate or interstate, and whether the minutes should be reimbursed from the intrastate or interstate jurisdiction. The introduction in October 2001 of nationwide access to relay service via three-digit dialing (7-1-1 access) has exposed another problem. While three-digit dialing has made relay service significantly more accessible to users of relay, customers using wireless phones while traveling outside their home states have encountered problems placing 7-1-1 calls to numbers located within their home states. A TRS call originating from a wireless phone issued in a given state and carried to a distant state may appear to the local relay service to be an intrastate call between two subscribers in a different state. Since many relay services are only authorized to process intrastate calls between callers in the state for which the provider is contracted for service, the relay service would not be paid if it handled this type of call.

This problem was brought before the Council initially at its December 2001 meeting, and discussed further at its April 2002 meeting. Subsequent to the initial meeting, it was discovered that the problem appears to occur in other instances as well. In some areas, wireless switches are sited close to state lines and wireless phones in one state may home on a wireless switch in an adjacent state. For example, a wireless customer in northwest Connecticut may wish to place a call to a friend with a hearing disability in New York, and dials the Connecticut relay service. If the wireless phone is served by a switch located just across the state line in New York, the call looks to the Connecticut relay service as if it is an in-state call for New York. Under these circumstances, the Communications Assistant for the Connecticut service would normally be required to refer the customer to the New York state relay service, even though the call is interstate in nature and thus compensable from the interstate fund.

⁸ There are currently thirty relay centers providing service to 50 states, the District of Columbia, Puerto Rico and the Virgin Islands.

The Council and NECA have worked closely with the Cellular Telecommunications & Internet Association (CTIA) and relay service providers in an attempt to quantify the extent of the overall wireless problem. Based on the data collected from the relay service providers, it appears that between 1.5 percent and 2.5 percent of calls received by the relay centers are placed from wireless devices. These calls account for approximately three-quarters to one percent of the total relay minutes handled by the centers.

Waiver Request

The TRS Advisory Council has asked NECA to petition the FCC on its behalf to resolve the wireless call problem on an interim basis by authorizing the interstate fund administrator to compensate relay service providers for all calls placed from wireless devices.

Consistent with section 225 of the Act, section 64.605 of the Commission's rules requires generally that costs of interstate TRS be recovered from all subscribers for every interstate service utilizing a shared funding cost recovery mechanism, while costs caused by intrastate TRS are to be recovered from the intrastate jurisdiction. As discussed above, however, it is not possible given current technology to determine whether particular calls from wireless telecommunications devices are intrastate or interstate in nature.

The Commission should therefore waive its jurisdictional cost recovery rules to the extent necessary to permit compensation of all mobile calls from the interstate fund. Waiver is requested for a two-year period in order to allow the Commission time to study the matter further and to obtain input from carriers, relay service providers, state regulators, TRS users and other interested members of the public.

NECA estimates that the potential additional funding required as a result of such waiver would be approximately \$2.5 million for the 2002 – 2003 funding period. Because the funding process anticipates the need for contingencies such as this, no additional funding would be required from the industry this year to effectuate such a change. This minimal

increase in cost would be far outweighed by the public interest benefits of the change, inasmuch as all users – wireline and wireless alike – would be able to utilize TRS services fully, including three-digit dialing capability, regardless of the telecommunications device used and the location of the party originating or receiving such a call.

Petition for Rulemaking

As explained above, wireless customers are currently disadvantaged in accessing relay services because the service was developed on a model that contemplated easy identification of call jurisdiction based on automatic number information typically transmitted with wireline calls. Identifying whether a particular call is jurisdictionally inter- or intrastate is often impossible with wireless calls, a circumstance that can prevent wireless callers from completing TRS calls quickly or easily using relay services.

Grant of the waiver requested above would resolve immediate problems associated with processing wireless relay calls. The Council is concerned, however, that several issues need to be addressed to determine long-term compensation methods for relay services in other circumstances where it is impossible to determine the jurisdiction of the call from ANI data transmitted with calls. For example, when local number portability is fully implemented, wireline subscribers who elect to “port” telephone numbers to different areas may encounter similar problems to those described in this petition for wireless users. Additionally, more difficulties are expected as a result of the implementation of digital wireless TTY compatibility solutions. Additional revisions to the rules may be necessary to address these broader issues of TRS accessibility in a portable number environment.

Accordingly, NECA and the Council request that the Commission initiate a separate rulemaking proceeding to consider appropriate compensation methods for relay calls where it is impossible to determine the jurisdiction of the call from ANI data. Since this issue is conceptually similar to the issues covered in the Further Notice of Proposed Rulemaking

accompanying the Commission's recent *Declaratory Ruling* on IP Relay services, the Commission may wish to consolidate the issues identified in this petition within the context of that pending rulemaking proceeding.

In any event, consideration of the long-term issues described above should not delay prompt action on the instant petition for waiver. Prompt grant of the requested waiver of the rules to permit compensation for these calls from the interstate fund is necessary to ensure that users of wireless telecommunications services can complete their calls efficiently and that relay providers can be compensated for the valuable services they provide.

Respectfully submitted,

NATIONAL EXCHANGE CARRIER
ASSOCIATION, Inc.

(On behalf of the Interstate TRS
Advisory Council)

By: /s/ Richard A. Askoff
Richard A. Askoff
Regina McNeil
Its Attorneys

July 22, 2002

80 South Jefferson Rd.
Whippany, NJ 07981
(973) 884-8000

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Petition for Interim Waiver and Rulemaking was served this 22nd day of July 2002, by electronic delivery and by first-class mail to the persons listed below.

By: /s/ Shawn O'Brien
Shawn O'Brien

The following parties were served:

Marlene H. Dortsch
Office of the Secretary
445 Twelfth St., SW
Room TW-A325
Washington, DC 20554
(filed through ECFS)

Margaret Egler
Consumer & Governmental Affairs
Bureau
Federal Communications
Commission
445 Twelfth St., SW
Washington, DC 20554

Eric Einhorn
Wireline Competition Bureau
Federal Communications
Commission
445 Twelfth St., SW
Washington, DC 20554

Pam Gregory
Consumer & Governmental Affairs
Bureau
Federal Communications
Commission
445 Twelfth St., SW
Washington, DC 20554

Tim Peterson
Office of the Managing Director
Federal Communications
Commission
445 Twelfth St., SW
Washington, DC 20554

Janet Sievert
Consumer & Governmental Affairs
Bureau
Federal Communications
Commission
445 Twelfth St., SW
Washington, DC 20554

Sharon Webber
Wireline Competition Bureau
Federal Communications
Commission
445 Twelfth St., SW
Washington, DC 20554

Qualex International
445 Twelfth St., SW
Room CY-B402
Washington, DC 20554

William Hill
Wireline Competition Bureau
Federal Communications
Commission
445 Twelfth St., SW
Washington, DC 20554

Les Selzer
Wireline Competition Bureau
Federal Communications
Commission
445 Twelfth St., SW
Washington, DC 20554

James Lande
Wireline Competition Bureau
Federal Communications
Commission
445 Twelfth St., SW
Washington, DC 20554